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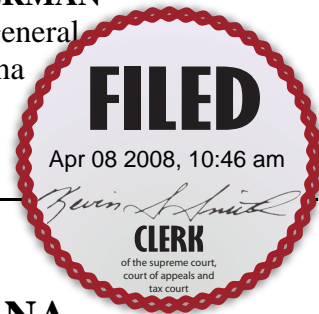
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**IN THE
COURT OF APPEALS OF INDIANA**

JULIE D. GRAY,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 48A02-0709-CR-832

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause Nos. 48D01-0606-FB-201, 48D01-0606-FD-184, and 48D01-0606-FA-167

April 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Following a guilty plea, Julie D. Gray appeals her thirty-eight-year executed sentence for nine felony convictions in three separate causes. We affirm.

Facts and Procedural History

The factual basis established at the guilty plea hearing indicates that on December 5, 2005, twenty-four-year-old Gray gave birth to her daughter, S.G., who was thirteen weeks premature and suffered from respiratory and other ailments. On March 11, 2006, the hospital released S.G. to Gray's care, with instructions to fill several prescriptions, attend doctor's appointments, and avoid exposing S.G. to secondhand cigarette smoke. S.G. was pronounced dead on April 20, 2006. An autopsy revealed that S.G. had pneumonia and bronchitis and that she had ingested nicotine from secondhand smoke and an unprescribed narcotic that depressed her respiratory system. The autopsy listed S.G.'s cause of death as prematurity and pneumonia. Gray had not filled S.G.'s prescriptions or taken her to at least some doctor's appointments and lied to investigators about having done so. The State's expert medical witness opined that the narcotic alone could have caused S.G.'s death. In cause number 48D01-0606-FA-167, the State charged Gray with class A felony neglect of a dependent resulting in death.

Four days after S.G.'s death, on April 24, 2006, Gray entered her older child's classroom, stole two checks from the teacher's checkbook, and forged the teacher's name on one of the checks, which was never cashed. In cause number 48D01-0606-FD-184, the State charged Gray with class D felony forgery and class D felony theft.

Finally, on or about May 12, 2006, Gray and an accomplice broke into the home of an acquaintance, stole a checkbook and other personal property, and then forged and cashed four checks. In cause number 48D01-0606-FB-201, the State charged Gray with class B felony burglary, class D felony theft, and four counts of class C felony forgery.

Pursuant to a plea agreement, Gray agreed to plead guilty to all counts in all three causes, with all sentences to be served concurrently and a cap of forty years. At the guilty plea hearing on July 12, 2007, Gray—who was out on bond—admitted to the factual basis and assured the trial court that she would attend the sentencing hearing on August 13, 2007.

Gray failed to appear, however, and the trial court sentenced her in absentia:

I have identified for the record and the Court will find five discre[te] aggravators.... [First, the] timing of offenses, the callousness of, of committing a criminal conduct within what, I think you said three or four days after your child has died, so the timing of the offenses. The theft from a teacher whose classroom you've gone to because you have a, a child who is in that classroom. And so the facts and circumstances, I think do rise to the level that is not just these criminal offenses, but the facts surrounding them, are an aggravating circumstance. Two, the fact that there are multiple offenses and multiple victims, that is clearly an aggravating circumstance. Three, the prior convictions and prior criminal record. [The prosecutor] chose to talk somewhat about the traffic record, but beyond that there is a Felony conviction [for three counts of obtaining a controlled substance by fraud or deceit and one count of attempting to do so, all class D felonies]. So there, there is this prior history. The fourth aggravator I note, it's really related to that but revocations of probation. A prior efforts [sic] by the Court to provide helpful tools to Ms. Gray, which she has not taken advantage of. And then finally, the fifth aggravator, her failure to appear today shows the, the kind of contempt for authority and the process.... The only mitigator, really, that [is] present that can [e]ffectively be argued, I think, by [Gray's counsel] is that Ms. Gray pled guilty, she did accept responsibility.... Having said all of that, the Court does conclude that the, aggravators substantially outweigh the mitigators[.]

Tr. at 73-75. The trial court imposed concurrent executed sentences of thirty-eight years for class A felony neglect, eighteen years for class B felony burglary, seven years for each class

C felony forgery, three years for class D felony forgery, and three years for each class D felony theft. Gray now appeals her sentence.

Discussion and Decision

Indiana Code Section 35-38-1-7.1(d) provides that a trial court may impose any sentence that is authorized by statute and permissible under the Indiana Constitution “regardless of the presence or absence of aggravating circumstances or mitigating circumstances.” Our supreme court has stated that “[s]o long as the sentence is within the statutory range, it is subject to review only for abuse of discretion.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218. “An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” *Id.* (citation and quotation marks omitted).

In *Anglemyer*, the court explained that

[o]ne way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law.

Id. at 490-91.

We can discern two discrete arguments in Gray’s appellate brief. The first is that “her prior criminal record, consisting of a majority of traffic offenses, was not properly applied by the trial court in application of the nature of the offense and the character of the offender.” Appellant’s Br. at 11. To the extent Gray suggests that the trial court improperly weighed

this aggravator,¹ we note that “[b]ecause the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence, ... a trial court can not now be said to have abused its discretion in failing to ‘properly weigh’ such factors.” *Anglemyer*, 868 N.E.2d at 491.

To the extent Gray asks that we consider her criminal history *vis-à-vis* the nature of the offenses and her character pursuant to Indiana Appellate Rule 7(B),² we acknowledge that the significance of a defendant’s criminal history “varies based on the gravity, nature and number of prior offenses as they relate to the current offense.” *Wooley v. State*, 716 N.E.2d 919, 929 n.4 (Ind. 1999). It is true that Gray’s criminal history consists mostly of traffic offenses, but the offenses are numerous and bespeak a lack of respect for the law.³ Gray has also violated probation, which reflects poorly on her character. Finally, we find it significant that Gray’s felony offenses involve controlled substances, given that an unprescribed narcotic likely contributed to her infant daughter’s death.

Gray’s second argument appears to be that the trial court improperly found that she was in a position of trust with her child’s teacher and her burglary victim. We note that although the prosecutor argued that Gray was in a position of trust with these persons, the

¹ See Appellant’s Br. at 11 (“The need for clarity and careful weighing, may be made by reference to appropriate criminal convictions, is more pronounced than ever given the increased importance prior criminal convictions play in the sentencing process.”) (citing *Morgan v. State*, 829 N.E.2d 12, 15-16 (Ind. 2005)).

² See Ind. Appellate Rule 7(B) (“The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.”).

³ Among other things, Gray has been convicted of several seatbelt violations, driving without a valid license, driving with a suspended license (twice, with a third charge pending), driving without insurance, driving eighty miles per hour in a fifty-five-miles-per-hour zone, and driving ninety-four miles per hour in a sixty-five-miles-per-hour zone. Appellant’s App. at 230-31.

trial court did not specifically find that to be the case. As such, we find no abuse of discretion.

In sum, Gray has failed to establish that the trial court abused its discretion or that her sentence is inappropriate in light of the nature of the offenses and her character. Therefore, we affirm.⁴

Affirmed.

BARNES, J., and BRADFORD, J., concur.

⁴ Gray also claims that “no consideration was given to the testimony pertaining to missed appointments and cigarette smoke as submitted by Gray at the dispositional hearing. Specifically, Gray’s attempt to have the minor child present for some appointments and that the exposure of cigarette smoke was caused by third parties.” Appellant’s Br. at 12. We note, however, that Gray acknowledged that she failed to keep other appointments and that she was “one of the adults in this house where there was smoke[.]” Tr. at 44. In other words, Gray endangered the already precarious health of her infant daughter by not taking her to doctor’s appointments and by allowing others to smoke in the vicinity.